App. F. IX-4

Previous References

1928-29
Law

File No. 28-78

Serial Nos. 1-6

Later References

Law 38-33-5-10
" 41-77-1-9

P 20

General and Revenue Secretariat.

Serial Nos.

Part B for Nov 1930

SUBJECT.

Nohā on behalf of Lavitāmma wife of Muttaka
of Nagarakallakunta Jonal Taluk Cuddapah
District praying for grant of Sirkar share of
Peddamāru Cheruvu Nagarakallakunta Village
Jonal Taluk Cuddapah District for the Fasli 1338

N. Venkata
13/11/30

From

H. Prahlada Rao, B.A., LL.B., Advocate,
and
Batni Ananda Rao, Vakil,
SHIMOGA.

To

The Chief Secretary to the Government of Mysore,
Bangalore.

Under Section 80 of the Civil Procedure Code:

Sir,

Our client, Savitramma wife of Puttappa of Nadahalli village in Sorab Taluk of this District has instructed us to issue this notice as required by Law:

Our client was the absolute owner of the schedule property in the Nadahalli village of Sorab Taluk, being the sole successor to her husband's prperty, who had divided himself from his brothers Gundappa, Thimmappa and Venkappa, who is the absconding accused in C.C.No. 218/26-27 on the file of the then II Class Magistrate at Sagar. The schedule properties were got attached on 7-6-1927 by the said Magistrate on the ground that it belonged to the said absconding accused Venkappiah. The accused venkappiah, having been divided in interest from his brothers, has no sort of right to or interest in the schedule property.

Our client, not being in the village throughout, remained ignorant of the attachment and the realisation of the crop or its value by the Government, which in fact was due to her. She became aware of these things only on 1-1-1928 by which time, limitation for filing a claim in the II Class Magistrates Court had expired. Ever since the attachment, the crop or its value is being credited to Government and our client has thus been cut away from the only source of her livelihood and

and has been put to much inconvenience.

Further, our client wishes to bring to your notice, the fact that the shares of the other brothers of her deceased husband, which had been attached in like manner, have been released from attachment.

Thus our client wishes to make known to you, that she is entitled to the possession of the schedule property, and for the sum that has been realised from the sale of the crops of the said land for the years 1927-28 and 1928-29 and such damages as interest.

So, please take notice that unless our client is put in possession of the schedule property and is reimbursed with the amount that was realised from the said land, within two months, a suit will be filed for possession of the land and the recovery of the said amount. Please know that the costs of this notice is assessed at Rs 5-8-0.

SCHEDULE.

1. ಶಿಂಠಬದ ತಾಲ್ಲೂಕು ನಡಿಹಳ್ಳಿ ಗ್ರಾಮದಲ್ಲಿ ಒಟ್ಟಿ ದಾರಳ ಪ್ರಾಪ್ತಿಲನಾನು ಭವದಲ್ಲಿರುವ ಶಿಂಠಿನ ತರಕಾರಿಲು:.

ಸಿ.ನಂಬರು 107 ನೇಲಿಪ್ಪಿತ ತರಿಯು ಕರಿಲಿ ಎಕರೆ
೦.೫ -೪-೦, ಶಿಂಠದ ನಡಿ, ಪಶ್ಚಿಮ 107 ನೇ ಮಾಪ್ಪಲ್ಲಿ, ಉತ್ತರ
111 - 112, ದಪ್ಪೀಲಿ 107 ನೇ ಪಿತ್ತಿಂ ಪೊಂಕಲ್ಪಿನ ಪಿತ್ತಿ.

ಪಶ್ಚಿಮ ನಂಬರು 107 ನೇ ಪಿತ್ತಿತ ಮಾಪ್ಪಲ್ಲಿಯಲ್ಲಿ,
ಎಕರೆ ೦-೬-೦, ಶಿಂಠದ 107 ನೇ ತರಿ, ಪಶ್ಚಿಮ ಶಿಂಠಲ ಪ
ಲಂಡಿದಾಂಠ, ಉತ್ತರ 107 ನೆ ಪೊಂಕಲ್ಪಿನ ಪಿತ್ತಿ. ದಪ್ಪೀಲಿ
ನಂಬರು 106.

We beg to remain,
Sir,
Yours faithfully,
Batni Ananda Rao
VAKIL.

Shimoga.
07. 7/6/29

Draft calling for a report from the Dist. Magr. Shimoga [illegible]

MM
18/6/29

Issue
D.m. 13/6
W

reference No. J1. 737/28-29 dated 16th July from the Dist. Magistrate, Shimoga, for the object of 1st Magistrate's report.

One Vernacular, an acc...

of her deceased husband, have been released from attachment on their preferring claims before the magistrate.

The fact of her not preferring a claim under sec 88 cl (6A) cannot in any way take away her rights, if any, in the property attached and a suit by her for recovery of poss[n] & mesne profits would be even maintainable against Govt under Reg VIII of 1923. The Deputy Comr has therefore to be asked to enquire about the tenability of Savitramma's claim & to restore poss[n] of the properties claimed in case he finds they belong to her. Draft sent.

MM
23-7-29

I do not think that the Dy. Comr can take action as indicated at A. He has no jurisdiction to determine the claimant's rights to the land in question or put her in possession of the lands if after enquiry he finds her claim to be well-founded. This is entirely a matter for adjudication by the Competent Civil Court. It seems to me therefore best to leave things as they are and await the threatened suit.

wrongful possession from which have come into their possession in due course of law [redacted] and are now at their disposal under the provisions of S-88(7), Cr. Pro. Code.
Secondly, where even a person, whose claim has been preferred within the period prescribed in S.88 (6A) + has been disallowed, loses this right to sue unless the suit is filed within one year from the date of the order disallowing the claim, the claimant in the present case who has failed to urge her claim within [redacted] the prescribed period of six months from the date of attachment and has slept over the matter for over two years from that date cannot be considered as still retaining her right to seize for possession of the property. The jurisdiction of the civil Court to entertain a suit filed under such circumstances has to be considered as impliedly barred" by the above-mentioned provisions of the Cr. Procedure

25/7

To the Deputy Comr. Shimoga

P/270 / 24.8.29

requesting him to enquire and report as to whom the properties in dispute really belong—

Draft R^r put up

26.11.29

Issued R 1^o 2893 dated 27.4.29

Letter no J.1-737/28-29 dated 18th Dec^r 29 from the District magistrate, Shimoga, forwarding a report as to the ownership of the properties in dispute.

It is clear from the report that the property claimed by Savitramma viz 2 acres of wet land and one acre of dry land out of S.No. 107 of Nadahalli Village, attached as belonging to accused Venkatta under sec 88 of the Cr. P. Code, really belongs to the deceased husband of Savitramma, he having got it at a partition evidenced by a registered document of 10-4-1913.

Special 1st Class magistrate may be ordered to dispose of the claim petition and pass order as to the mesne profits from the date of attachment.

This appears to be irregular

Since 1) there is no claim petn pending before the magt.

2) a new claim petition would be out of time under Sec 88 Cl 6 A

3) the magistrate has no powers under the Cr. P. Code of dealing with the case suomoto and revising his previous orders.

Under Sec 88 - Cl (1) of the Cr. P. C. the property after attachment is placed at the disposal of Government, but since the Court retains jurisdiction to pass orders regarding its sale etc (Vide Sec 89), the property must be deemed to be in the Custody of the Court. If this view is right, Sec 517 (1) of the Code is applicable, and the Court after the inquiry or trial is concluded, order the delivery of the property in its custody to the person entitled to the same.

This means that the party entitled to the property has to await the conclusion of the trial or enquiry

In a clear case such as the present one, there does not appear to be anything irregular in the Government ~~[illegible]~~, at whose disposal the property is, ordering the Deputy Comr to deliver back the possession of the property to the rightful owners. Under Sec 88 Cr.P.C. the Court has jurisdiction to attach the property of the pro-claimed person. Any attachment of other's properties is without jurisdiction and does not in any way bind the rightful owners. He has the option of taking advantage of the simple remedy of getting back possession of property by means of an appln under Sec 88(6A). In case he elects this remedy and gets an adverse order even he loses his right to the property unless he gets the adverse order vacated within the time prescribed, by means of a Civil Suit. If however he stands by and claims possession of the property from the person then in its possession, such person if he is satisfied

desire an adjudication ~~as to~~ ~~that~~ Court so that he may not be ~~liable~~ in ~~to~~ which he is at liberty and cannot incur any liability by putting the property in the possession of the ~~plaintiff~~

Applying this principle, it follows that the Govt manager and D.C may order delivery of the possn of the property in question to the claimant Savitramma The D.C may also settle the question of mesne profits with the claimant.

Submitted for orders.

2.1.30.

There seems to be no objection to adopt the course suggested at A on the previous page.

Secy)

Draft put up

1/6

1st VV

X Letter no. F.D. 78

the Dist Magte Shimoga [illegible] a reminder
has been issued to the [illegible]
delivery of possession of property attached in C.C.
of 27-28 and the information required will
be furnished after the receipt of the report.

TSO
SPG

No mo
SPG

Letter no. FD. 737/28-29 dt 21st Oct 1930
from the DC Shimoga stating that the
report called for re: the Property to be
delivered in C.C. 218 of 26-27 on the file
of the 1st class magte Sagar has not been received,
the information req^d will be furnished after the
receipt of the report

Letter No [redacted] dated 28.10.30 from the D.C. Shirdi forwarding a report from the 1st class "Magistrate" re: the properties to be delivered in C.C. No. 218 of 27-28, and stating that the properties attached in the said case, have been delivered possession of to Savitramma, as rep[resented] by the Auditor, Surat Tk, and arrangements have also been made to pay the mesne profits to the Savitramma.

For perusal.

This will be filed after perusal

TSD 1/11.

Legal Asst

1/11

4/7/11

13/4

Camp No. P 16 / June one

To

The District magistrate
Shimoga,

Sir, I am directed to forward herewith Copy of the notice dated 7th June 1926 issued under Sec 80 of the Code of Civil Procedure by Mr Vaturi Ananda Rao, Vakil Shimoga on behalf of one Savitramma claiming possession and mesne profits of certain lands said to have been attached vide 218 of 27.28 on the file

of the II class magistrate at Sagar and to request you to send a detailed report with the connected records if any within 15 days from this date.

Thanks

Legal Adv

Dy
10/6.

OFFICE OF THE DISTRICT MAGISTRATE.
SHIMOGA DISTRICT.

NO. J1. 737/28-29. DATED, SHIMOGA 16th July 1929

From

B.T.KESAVAIENGAR, ESQ., B.A.,
District Magistrate,
Shimoga District.

To

P.MAHADEVAYYA, ESQ., B.A., B.L.,
Secretary to Government,
Law Department, BANGALORE.

Sir,

With reference to your letter No. P. 16/128-28 dated 17th June 1929 calling for a report on the notice issued by Mr. B. Ananda Rao Vakil on behalf of one Savitramma claiming possession and mesne profits on certain lands said to have been attached in C.C. No. 218 of 27-28 on the file of the Special Second Class Magistrate Sagar, I have the honor to state that the report received from the Special Magistrate Sagar goes to show that all the properties alleged to belong to accused Venkappa - who has absconded - ware got attached and that the Amildar, Sorab, was appointed receiver for all the properties in this connection and that he was realizing the crop or its value. Several claim appliaations are stated to have been received and disposed of on their merits. No application seems to have been made by Savitramma on whose behalf the notice in question has been issued by the pleader. A copy of the letter received from the Special Magistrate Sagar is enclosed for favour of information. The notice received with the letter is resubmitted herewith.

The records in C.C.No. 218 of 26-27, it is learnt, have been sent to the Chief court for reference in connection with Revision petition number 42 of 27-28 with session case record of case No. 5/27-28

I have the honor to be,
Sir,
Your most obedient servant,

District Magistrate.

Copy of letter No. 10/29-30, dated 10th July 1929, from the Special I Class Magistrate, Sagar, to the District Magistrate Shimoga.

******

With reference to your letter No. J1. 737/28-29 dated 22nd June 1929 asking for a detailed report regarding the claim put forwa by one Savitramma concerning cetain lands attached in C.C. No. 218/26-27 on the file of this court, I have the honor to state that I am unable to furnish the detailed report called for as the records are before the Chief Court as the letter of the Assistant Sessions Judge, Shimoga, No. 14 and 8-7-1929 shows. Still I will endeavour to make the following report from the facts which I recollect from my memory. Nadehalli Venkappa was one of the accused in the counterfeit currency note case (C.C.No. 218/26-27) He absconded and his whereabouts were not known. So according to the information furnished by Nagar Police all the properties alleged to belong to said accused Venkappa were got attached. Several claim petitions were filed by several persons. The Public Prosecutor Mr. Sesha Shastry of Shimoga was specially deputed to conduct these claim cases and some of the claim cases were allowed as the claiments produced registered documents showing their shares in the property and the Public Prosecutor had no objection to allow them. The Amildar, Sorab taluk was appointed the receiver for all the properties in this connection and he was in charge of the properties and was realising the crop or its value.

No application seems to have been filed by Savitramma in this court. Savitramma alleges in the notice that she was ignorant of the attachment till 1-1-28. The attachment was effected in accordance with law.

The documents relied on by Savitramma may be called for if necessary and the matter may be settled without allowing them to go to court if it is deemed fit to do so after perusing the papers. All the correspondence of this case is herewith returned.

"Copy"

Received

Deputy Commissioner,
District Magistrate
Shimoga District.

From

H. Prahlada Rao, Advocate, and

Batani Ananda Rao, Vakil, Shimoga.

To

The Chief Secretary to Government.

Under Section 80 of the Civil Procedure Code:

S i r,

Our client, Savitramma wife of Puttappa of Nadahalli village in Sorab Taluk of this District has instructed us to issue this notice as required by Law:

Our client was the absolute owner of the schedule property in the Nadahalli village of Sorab Taluk, being the sole successor to her husband's property, who had divided himself from his brothers Gundappa, Thimmappa and Venkappa, who is the absconding accused in C.C.No.218/26-27 on the file of the then II Class Magistrate at Sagar. The Schedule properties were got attached on 7-6-1927 by the said Magistrate on the ground that it belonged to the said absconding accused Venkappiah. The accused venkappiah, having been divided in interest from his brothers, has no sort of right to or interest in the schedule property.

Our client, not being in the village throughout, remained ignorant of the attachment and the realisation of the crop or its value by the Government, which in fact was due to her. She became aware of these things only on 1-1-1928 by which time, limitation for filing a claim in the II Class Magistrates Court had expired. Ever since the attachment, the crop or its value is being credited to Government and our client has thus been cut away from the only source of here livelihood and has been put to much inconvenience.

Further, our client wishes to bring to your notice, the fact that the shares of the other brothers of her deceased husband, which had been attached in like manner, have been released from attachment.

So, please take notice that unless our client is put possession of the schedule property and is reimbursed with the amount that was realised from the said land, within two months, a suit will be filed for possession of the land and the recovery of the said amount. Please know that the costs of this notice is assessed at Rs.5-8-0.

Schedule.

1. సూరబదశాట్లాకు నడుమళ్ళ గ్రామదల్లిలో చిన్నారళ్ళ భాగిత్రీనాను చువదల్లిరువ స్థిరనిశ్చిలు:-

సర్వేనంబరు 107నేబ్లాకిరది ఎకరె 2, ఆకార రూ 8-0-ం. పూర్వనది, పశ్చిమ107నేఖుష్కి, ఉత్తర 111-112, దక్షిణా 107నే బ్లాకిచేంచవ్వనజేన్సి.

సర్వేనంబరు 107నేబ్లాకిఖుష్కి ఎకరె 1, ఆకార ం-6-ం, పూర్వ107నేకరి, పశ్చిమ సూరబద బండిదారి, ఉత్తర 107నేమాకవ్వన ఖుష్కి, దక్షిణనంబరు 106.

"Copy"

For Secy.to Govt.,Law Dept.,

SUBJECT.....

.....

.....

Section Law

File No. 128 of 29

Serial No. 4

No. 1270

Diary No. of letter replied to.....300.....

General and Revenue Secretariat

( )

the *192*

To

The Deputy Commissioner

—Shimoga.

Date of issue.....24/8/29.....

Signed by.....W N [illegible]

Sir,

With reference to your letter No: D. 1. 737/28-29 dated 16th July 1929 forwarding a report on the notice issued by Mr. B. Anandaa Vakil on behalf of one Savitramma Claiming possession and mesne profits of certain lands attached in C.C. No 218 of 27-28 on the file of the II Class magistrate Sagar, I am directed to ~~xxx~~ State that her ~~not~~ omission to prefer~~ring~~ a claim under

List of enclosures.....

Copied by.....

Examined by.....

Sec 88 cl 6A of the Criminal Procedure Code is quite immaterial so far as ~~how regards~~ the maintainability of the suit threatened in the notice is concerned I am ~~therefore~~ therefore to request ~~to~~ you/to enquire ~~before~~ for whether the ~~liability of~~ properties mentioned in ~~the~~ the Sait~~ramma's~~ notice belong to ~~her~~ Sait~~ramma's~~ deceased husband as ~~stated therein~~ contended by her or to the absconding accused Venkatha.

The matter may be treated as urgent ~~and~~ so that the matter may be disposed of early ~~so that~~ without any litigation, if ~~in the matter may be~~ avoided.

Thanking

NO. J.1-737/28-29

From

M.N.BalaRaj Urs Esquire, B.A.,

District Magistrate,
Shimoga District.

To

P.Mahadevaiyya, Esquire, B.A., B.L.,

Secretary to Government in Mysore,

Law Department, BANGALORE.

Sir,

Subject:- claim petition of Savitramma in respect of posions of Survey Nos 107 of Nadahalli village Sorab Taluk, attached in C.C. No 218 of 26-27 on the file of the Special 2nd Class Magistrate, Sagar

---

With reference to your letter No 1270/Law/128-28-4 dated the 17th June 1929 forwarding ~~a copy of the notice dated the 17th June 1929~~ forwarding a copy of the notice dated the 7th June 29 issued under sec 80 of the code of civil Procedure by Mr.Batni Ananda Rao Vakil, Shimoga, on befalf of one Savitramma claiming possession and mesne profits of certain lands said to have been attached in C.C. No 218 of 26-27 on the file of the Special 2nd Class Magistrate, Sagar and requesting that a detailed report with the connected records may be sent up, I have the honour to forward herewith the entire records received from the Amildar of the Sorab Taluk on the 21st November 29 with his report No GL 738 of 26-27 dated nil

The facts of the case as gathered from the records are:- that one Venkappa of Nadahalli in the Sorab Taluk was one of the accused in the counterfeit currency note case, Cr case No 218 of 26-27 on the file of the Special 2nd Class Magistrate Sagar. He absconded and his whereabouts were not known. So according to the information furnished by the Police, all the properties alleged to belong to the said absconding accused Venkappa were

were attached by the Court and the Amildar of the Sorab Taluk was appointed receiver. It is reported that several claim petitions were filed by several persons, that Mr.N.Seshasastri, Public Prosecutor, Shimoga, was specially deputed to conduct these claim cases and the claims disposed of on Merits.

Savitramma, the petitioner on whose behalf the notice has been issued, claims 2 acres of wet land and one acre of dry land out of Survey No 107 of Nadahalli village, assessed at Rs8-8-0 and 0-6-0 respectively now under attachment as belonging to her.

Mr.B.Ananda Rao to whom a notice had been issued by this office to produce the partition deed or an authenticated copy thereof has, on the 5th instant, produced an authenticated copy of the partition deed from which it will be seen that the four brothers viz. 1 Thimmappa, 2 Mariyappa 3 Puttapp and 4 Venkappa (accused) effected a partition of the properties belonging to them on 10-4-1913 and got it registered on 29-7-1913 and that 2 acres of wet land and one acre of dry land in Survey No 107 of Nadahalli village went to the share of Puttappa - their brothers. Savitramma widow of Puttappa claims for their release. The copy of the partition deed referred to above is herein enclosed for favour of perusal. The entire records may be kindly perused and returned and the Specail 2nd Class (now 1st Class) Magistrate of Sagar may be kindly ordered to dispose of the claim petition on merits and pay her the mesne profits from the time of attachment.

Venkappa has since surrendered and the case is proceeding in the Special 1st Class Magistrate Court, Sagar.

I have the honour to be,
Sir,
Your most obedient servant

B. Sivaramaiah

for District Magistrate,
Shimoga District

(on tour)

To

The Deputy Comr.
Shimoga

Sir,

With reference to your letter No: J 1-737/28-29 dated 18th Decr 1928 forwarding a report re [redacted] the claim of [redacted] of the properties of Savitramma to the properties attach C.C. No 218 of 26-27 on the of the special 2nd class magistrate Sagar, I am directed to request you to instruct the Amildar of Sirsi to deliver back the possession of

the property to the rightful
owners together with the
income, derived therefrom since
the attachment, and said
in the Auditor's report to be
kept in the Treasury as a
Judicial Deposit.

The action taken may be
reported to Govt for information
The records sent with your letter.

I have ok

W LR.

Dyp
11/12

The Deputy Commissioner,

Shimoga District.

With reference to your letter No.J1-737/28-29 dated December 1929 forwarding a report regarding the claim of Savitramma to the properties attached in C.C.No.218 of 26-27 on the file of the Special Second Class Magistrate, Sagar, I am directed to request you to instruct the Amildar of Sorab to deliver back the possession of the property to the rightful owner together with the income derived therefrom since the attachment, andsaid in the Amildars report, to be kept in the Treasury as a Judicial Deposit.

The action taken may be reported to Government for information. The records sent with your letter are here returned.

I have the honour to be,

Sir,

Your most obedient servant,

For Legal Remembrancer &
Secretary to Govt.,
Law Department.

From

G.Rudrappa, Esq., M.A., (Oxon)
Bar-at-Law
Offg; Deputy Commissioner,
SHIMOGA DISTRICT.

To

P. Mahadevaiya, Esq.,B.A.,B.L.,
Secretary to Government;
Law Department,
BANGALORE.

Dated 28th October 1930

Despatched

Received

General No.
No. J1. 757/28-29.

Enclosure No.

Sir,

With reference to your letter No. 7252 dated the 17th June 1930 requesting me to instruct the Amildar of Sorab taluk to deliver back the possession of the property attached in Cr. case No. 218 of 27-28 on the file of the Special Magistrate, Sagar to the rightful owner and to report the action taken in the matter and subsequent reminders in connection therewith, I have the honor to forward herewith copy of letter No. 161 of 30-31 dated the 16th instant from the Special 1st class Magistrate, Sagar to the effect that the property attached in the said case is reported by the Amildar of Sorab taluk to have been delivered possession of to Savitr and that arrangements have also been made to pay the mesne profits to Savitramma.

Copy of letter No. 161/30-31 dated 16th October 1930 from the Special Assistant Magistrate, Sagar, to the District Magistrate Shimoga.

In continuation of this office M .103/30-31 dated 4-9-1930 in the matter of delivery of possession of property attached in O.S.No.218/27-28 on the file of this court to one Savitramma, I have the honor to state that the Amildar of Sorab taluk (receiver in the said case) reports in his No. A. R.3/27-28 dated 11-10-30 that the property attached in the said case has been given possession to the party Savitramma, but the mesne profits of Rs 25/4/- accrued from the property during the year 1927-28, due to said Savitramma has been sent by a cheque to Sagar Munsiff's court as per order of that court. He further reports that a reference has also been made to that court to make arrangements to give the said amount to Savitramma

---

" C o p y "

for Deputy Commissioner.

Shimoga District.